

Please note that sales of "canned" computer software are considered taxable retail sales in Illinois regardless of the manner of the transfer of that software (electronically for example). See the enclosed copy of 86 Ill. Adm. Code 130.1935. (This is a GIL.)

April 3, 2003

Dear Xxxxx:

This letter is in response to your letter dated November 27, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

AAA requests a letter ruling stating your opinion regarding the proper application of Illinois' sales & use tax laws with respect to Web-based AAA.

A. Overview of Business

AAA, a STATE corporation with headquarters in CITY/STATE, provides information services to the XXXX industry. Relevant identifying information for AAA is as follows:

ADDRESS

B. Analysis of Web-based BBB.

AAA plans to release Web-based BBB. Web-based BBB is a browser-based application, which facilitates access for professionals to a database that offers a full inventory of XXX complete with thousands of useful details. Customers enter into annual subscription agreements with AAA, which have payment terms ranging from monthly to annually. The customers access the data through the Internet on their own computers and the database is maintained on AAA's servers. Web-based BBB is designed to be user-friendly and self-directed therefore no AAA employees or agents are required to install software at customer sites.

Initially as part of the product rollout, a AAA representative may visit the customer site for training on the use of the product. Once Web-based BBB is completely released and fully functional, this training will likely no longer be necessary.

C. Discussion

Most states generally impose their sales tax on tangible personal property. On the other hand, the delivery via the Internet of data or information services, and the general sale of professional or personal services are not subject to sales tax. We believe Web-based BBB is in the nontaxable services category. However, we do not want to inadvertently incur a liability for the failure to withhold a sales tax, in the event it is taxable in your state.

D. Ruling Requested

AAA has concluded that Web-based BBB is not subject to sales tax, since the customer is merely provided a service access to a database on the Internet and receives all the data electronically (no tangible personal property is conveyed). The customer is actually purchasing the service of our research department. AAA has also concluded that the training portion of this arrangement is not subject to sales tax, since the customer is being provided a service (no tangible personal property is conveyed).

We request that you provide us your opinion regarding the proper application of Illinois' sales & use tax laws with respect to Web-based BBB.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Retailers' Occupation Tax and Use Tax would apply. Please note that sales of "canned" computer software are considered taxable retail sales in Illinois regardless of the manner of the transfer of that software (electronically for example). See the enclosed copy of 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of Section 130.1935.

We note that you provide access to databases. Please note that the Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed. As you can see from 86 Ill. Adm. Code 495.100(c), charges for automated information retrieval or data processing are not taxable. The regulation contemplates that charges for access to an on-line computer database fall within this category. As the regulation indicates, charges for the inquiry or access are generally not taxable, but charges, if any, for transmission of the data are generally taxable. If retailers provide both transmission and data processing services, the charges for each must be separately disaggregated and identified in the books and records of the retailers. If such charges are not disaggregated in this manner, then all charges are taxable.

Please note that information that is downloaded is generally not taxable because it is intangible. However, if you transfer such information in a tangible format, such as on tape or disk, such transfer is taxable as either a Retailers' Occupation Tax or a Service Occupation Tax transaction depending on whether the item is customized. When you sell an item standard enough to be stocked for sale to the public generally, i.e., one that is not customized to the specifications of a

particular purchaser, the entire charge for the product is subject to Retailers' Occupation Tax. If the item, however, were customized for a particular purchaser, it would be subject to the Service Occupation Tax. See discussion below and the enclosed copy of 86 Ill. Adm. Code 140.101, which explains the application of the Service Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.